

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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EDWARD HARDGE, JR., and GWENDOLYN  
HARDGE,

UNPUBLISHED  
August 1, 2006

Plaintiffs-Appellees,

v

WAYNE COUNTY,

No. 266780  
Wayne Circuit Court  
LC No. 04-414587-NI

Defendant-Appellant.

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EDWARD HARDGE, JR., and GWENDOLYN  
HARDGE,

Plaintiffs-Appellees,

v

WAYNE COUNTY,

No. 266808  
Wayne Circuit Court  
LC No. 04-414587-NI

Defendant-Appellant.

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Before: Jansen, P.J., and Murphy and Fort Hood, JJ.

JANSEN, J. (*concurring in part and dissenting in part*).

I concur with the majority's determination that plaintiffs sufficiently established a genuine factual dispute with respect to whether Trent had properly activated the truck's lights or warning signals. I further concur with the majority's conclusion that driving without lights or attached warning signals under certain circumstances can constitute the "negligent operation . . . of a motor vehicle" within the meaning of the relevant governmental immunity exception. MCL 691.1405. As the majority correctly notes, lights and warning signals *that are attached to the motor vehicle* are part of the vehicle, and their use goes hand in hand with the act of driving the vehicle itself. Accordingly, I agree that the provisions of the Michigan Manual of Uniform Traffic Control Devices (MMUTCD) related to the use of flashing lights or warning devices directly affixed to the maintenance vehicle may be introduced to the jury as evidence of negligence.

I write separately because I do not agree that the MMUTCD provisions regarding flashing arrow panels may be introduced to the jury as evidence of negligence. Unlike affixed warning lights and devices, flashing arrow panels are not typically directly attached to maintenance vehicles. Instead, flashing arrow panels are generally either free-standing warning signs, or mobile warning panels that trail the primary maintenance vehicle. See MMUTCD, 2005 revision, § 6F.56. As such, flashing arrow panels are not part of the maintenance vehicle itself, and their use is necessarily separate and distinct from the “operation . . . of [the] motor vehicle.” Because the use of unattached flashing warning panels is not part and parcel of the “operation . . . of a motor vehicle,” defendant’s failure to use such flashing warning panels in this case cannot constitute evidence of the “negligent operation . . . of a motor vehicle” within the meaning of MCL 691.1405. See *Chandler v Muskegon Co*, 467 Mich 315, 321; 652 NW2d 224 (2002) (construing MCL 691.1405 narrowly and holding that “the ‘operation of a motor vehicle’ encompasses activities that are directly associated with the driving of a motor vehicle”).

/s/ Kathleen Jansen